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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 18th May, 2017

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CRL.A. 649/2007

MADHU SANKHLA

..... APPELLANT

Through: Mr. Sidharth Luthra, Sr Advocate
with Mr. Maninder Singh, Ms. Smriti
Asmita, Mr. Hitesh Kumar and Mr. Karan
Mehta, Advocates

versus

STATE

..... RESPONDENT

Through: Mr. Nikhil Goel and Mr. Ashutosh
Ghade, Advocates

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. By the appeal at hand, the appellant has challenged the judgment dated 25.09.2007 of the court of Special Judge (Prevention of Corruption Act) in Criminal case no.74/2004 for offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 and the order dated 26.09.2007, passed in its wake, holding her guilty as charged and sentencing her to undergo rigorous imprisonment for a period of two years with fine of Rs.25,000/- on the first count and rigorous imprisonment for a period of three years with fine of Rs.25,000/- on the second count.

2. The background facts may be taken note of at the outset. The appellant was working as sub-inspector with Delhi Police, posted in the Crime against Women Cell (CAW Cell) at Amar Colony, New Delhi during the relevant period. A crime, vide first information report (FIR) no.997/1998, had been registered in police station Sri Niwaspuri at the instance of Juhi Modi in October 1998 against her husband and members of her matrimonial family. The said FIR was transferred to CAW Cell and entrusted to the appellant on 23.11.1998 for further investigation by Shashi Punj (PW-9), then inspector CAW Cell, posted as immediate superior of the appellant at that point of time. It may be added here that in the hierarchy, ACP Parveen Dutt (PW-8) ranked senior to both the appellant and PW-9 she being the supervisory officer.

3. The investigation into the afore-said FIR was not completed, nor a report under Section 173 of the Code of Criminal Procedure, 1973 (Cr. PC), came to be filed till end of September, 1999. It is against this backdrop that Ratan Kumar Modi (PW-2), father of the first informant of the said FIR (Juhi Modi), was concededly visiting the office of CAW Cell and meeting not only the investigating officer of the case (the appellant) but also her superiors (PW-8 and PW-9), his insistence being on early filing of the charge-sheet, the grievance naturally being of inaction in that direction.

4. As per the prosecution case brought before the court of Special Judge, PW-2 came to the office of Anti Corruption Bureau of Central Bureau of Investigation (CBI) on 01.10.1999 and lodged a complaint (Ex. PW2/A) on the basis of which the FIR (Ex. PW10/A) was

registered, the direction thereupon to Inspector P. Balachandran being for a trap to be laid.

5. A perusal of the FIR shows that PW-2 had informed that he had been called by CAW Cell on several occasions and statement of his daughter had already been recorded but over the last two visits, the concerned police officers were behaving differently and upon being asked as to the reasons why challan had not been filed, he had been told that the instructions from the higher authorities were to go slow, the communication having come from an Additional Sessions Judge (named in the FIR), for challan not to be filed. He alleged that on 30.09.1999, he had been called by the appellant in the afternoon when she with PW-9 had told him that challan could be filed only after he paid a sum of Rs.50,000/- to them which would be also for PW-8, the amount being towards bribe. He went to the extent of stating that he was taken to PW-8 who assured that the challan would be filed after the amount of bribe had been paid and, in response, he had agreed to pay the first instalment of Rs.5,000/- each meant for the appellant and PW-9 and Rs.10,000/- meant for PW-8 by the next day in the afternoon.

6. The proceedings (Ex. PW2/B) conducted by Inspector P. Balachandran (TLO), described as handing over memo, reveal that he arranged the presence of four independent witnesses, they being Radhey Shyam (PW-3), B.K. Bhatnagar (PW-4), both Deputy Managers in ITPO, New Delhi, besides C.S. Chadha and Satish Kumar, senior assistants of ITPO. It may be mentioned here itself that though C.S. Chadha and Satish Kumar are shown to have participated

in the preliminary proceedings anterior to the raid, they are not shown to have been taken along further or to have witnessed any proceedings, particularly at the office of the appellant. The prosecution would eventually rely on the evidence of PW-3 and PW-4 to lend independent corroboration.

7. PW-2 (the complainant) statedly had arranged an amount of Rs.20,000/- which was to be paid as illegal gratification pursuant to the demand by the appellant PW-8 and PW-9, this being in the form of forty currency notes of Rs.500/- denomination each. In the handing over memo (Ex. PW2/B), the preparation in the nature of treatment of the said currency notes with phenolphthalein powder, explanation of the process to the witnesses and to the complainant in such regard and, crucially, arrangement for audio recording of the conversation at the time of the handing over of the bribe money through a receiver-cum-recorder with a blank micro cassette were recorded. It also needs to be noted that the receiver-cum-recorder was handed over to the complainant, who was to carry the same in addition to his cellular phone and the treated currency notes, the instructions to him being to hand over the money to the appellant, PW-8 and PW-9, on specific demand and not otherwise and, after the bribe money had been accepted, to give a signal by making a call from his cellular phone on to the pre-fed number of the investigating team, PW-3 being deputed as the shadow witness to remain in close vicinity to hear and see the demand and acceptance of money.

8. According to the prosecution story, the complainant had met the appellant in her office in CAW Cell sometime after 3.15 p.m. on

01.10.1999. He was accompanied at that time by PW-3, other members of the trap party having taken positions nearby. The lay-out of the room where the alleged transaction took place, is depicted in the site plan (Ex. PW3/B). It is undisputed case of both sides that in the said room, another police official, she being SI Shashi Bala (PW-5) also had her office desk, she being present throughout the transactions which are subject matter of the allegations against the appellant. The site plan shows that the PW-9, the immediate superior of the appellant, had her office across the corridor in front of the room of the appellant. The site plan further shows that sitting arrangement, possibly for visitors to the office, was available in the corridor, the position of PW-3, shadow witness being right in front of the door from where he was in a position to see inside.

9. In the wake of the trap operation, police proceedings were reduced into writing in what has been described as recovery memo (Ex. PW2/D), by the TLO. According to this memo, after entry into the office of the appellant, the complainant had made a call from his cellular phone to the TLO to inform him that the appellant was in the office and had agreed to accept the entire money i.e. Rs.20,000/-, also agreeing to pass it on to PW-8 and PW-9. Upon this, the TLO instructed him to hand over the money to the appellant, if she so demanded and was ready to accept it. The complainant, who had come out of the building to make the said call, then went inside again with the shadow witness (PW-3) and at about 3.40 p.m., he came out and contacted the TLO informing him that the money had been accepted by the appellant, she having received it with her left hand

and having kept it on her table under a file. The handing over and acceptance of the bribe money was confirmed by PW-3. The recovery memo further indicates that the TLO, with rest of the members of the trap team, had gone inside the room of the appellant and, after his own introduction, questioned her about the acceptance of the bribe money, in response to which the appellant became visibly upset, started shivering and collapsed in her chair, upon which she was attended to by her colleague PW-5. The recovery memo, then narrated the proceedings conducted including taking of the hand wash of the appellant, table wash and wash of the file under which the bribe money had been found lying, each such exercise confirming the presence of the phenolphthalein powder. It is pertinent to note here that the micro cassette, which was used in the trap, was statedly *“rewound and listened in the presence of the witnesses”*, the conversation recorded therein having confirmed the version of the complainant regarding the demand of bribe. The said cassette, currency notes, wash of the hands, of the table and of the file cover, besides other evidence were seized, having been separately sealed. The appellant was arrested on the same date after personal search vide memo (Ex. PW10/B).

10. On the basis of the charge-sheet that was submitted eventually, the appellant was put on trial on the basis of charge framed on 28.10.2002 to which she pleaded not guilty.

11. The prosecution examined, in all, eleven witnesses, they being K.S. Chhabra, Sr. Scientific Officer (Retd.) CFSL (PW-1); Ratan Kumar Modi (PW-2); Radhey Shyam (PW-3); Bishan Kumar

Bhatnagar, Manager (Elec). ITPO (PW-4); Shashi Bala Kaushik, Inspector, Delhi Police (PW-5); P. Kamraj, DIG, CBI (PW-6); SQ Ali, Inspector, CBI (PW-7); ACP Mrs. Parveen Dutt (PW-8); Shashi PUnj, ACP, CAW Cell (PW-9); Inspector Mirdula Shukla, ACB, CBI (PW-10); and, HS Karmyal, Inspector, CISF (PW-11).

12. After the prosecution evidence had been concluded, statement of the appellant was recorded under Section 313 Cr. PC in which she claimed to be innocent and falsely implicated. She stated that the complainant had been nursing a grudge against her because in the dowry harassment case of his daughter, bail order had been passed by the court of sessions. She denied having made any demand for illegal gratification or having accepted any money from the complainant. She examined ASI Sheeshpal (DW-1) to prove that prior to the filing of the FIR and the raid, she had already been transferred from CAW Cell and had been relieved on 28.09.1999. The witness was posted as reader in CAW Cell, attached to PW-9, and stated that he had been on duty on 28.09.1999 to 01.10.1999. The fact that the appellant had already been transferred from CAW Cell and had been relieved to join her new posting in police station Lodhi Colony on 28.09.1999 has been confirmed by PW-8 and PW-9, though according to PW-9, the appellant had requested her to continue in CAW Cell for another couple of days due to some domestic compulsions.

13. The learned trial judge found the evidence adduced by the prosecution before him to be trustworthy. He thus accepted the word of the complainant as to the demand and payment of bribe as also its

acceptance upon being tendered by the appellant in her office as stated above.

14. Having heard the learned senior counsel for the appellant on the appeal at hand, however, this court finds that there are deficiencies and gaps in the evidence, which give rise to doubts as to the veracity of the prosecution case and its prime witnesses. The reasons for such doubts may be set out hereinafter.

15. The TLO has not been examined. It was explained by PW-10 that the said official was unable to travel to Delhi on account of his kidney failure. But then, possibly some arrangement for his examination by issuance of the commission could have been organized. This, however, by itself cannot mean that the case for the prosecution should fail. The charge could still be held to be proved if the evidence of other witnesses inspired confidence and there were no deficiencies going to the root of the matter. This, however, cannot be said to be the status of the case at hand.

16. Strangely, with no sufficient explanation offered, PW-8 and PW-9 who had been named by PW-2 in the FIR to be party to the demand of illegal gratification by the appellant, were presented as witnesses for the prosecution. It could have been a different matter if the desire of PW-8 and PW-9 had been communicated by the appellant to PW-2 without he coming face to face with them. Such scenario would fit in with the evidence of PW-8 and PW-9 that despite she having been posted out, and even relieved of her charge in CAW Cell on 28.09.1999, she had continued, upon her insistence, on some excuse of domestic compulsions in the same office till 01.10.1999. It

is, noticeably, a case where PW-2 is on record to state the fact that PW-8 and PW-9 were also party to the demand of illegal gratification, this by his such assertion in the FIR and then again in the witness box at the trial. He went to the extent of stating that he had met both PW-8 and PW-9 who had reiterated directly to him the demand conveyed through the appellant.

17. In these facts and circumstances, it will not safe to draw any conclusions against the appellant on the basis of testimony of PW-8 and PW-9 as to her role or undue interest in the matter.

18. In the FIR, and again in the court, PW-2 mentioned specifically the name of a senior judicial officer on whose instructions the investigation was statedly going slow. While it was most unreasonable and uncalled for on his own part to insist that a charge-sheet be filed in a dowry harassment case, there being no such right available in law to the complainant or her kin - whether or not a case was to lead to prosecution being in the domain of the investigating police - the extraneous pressures, if any, on the investigating police officers required a deeper probe. Going by the record of investigation in the case at hand, this angle was never followed up. In this view, it cannot be said with certainty that the appellant was intentionally going slow in the investigation of the dowry harassment case so as to exert pressure on PW-2 to cough up money. Against this backdrop, the defence plea that the complainant had some cause for being worked up against her cannot be lightly brushed aside.

19. If one goes by the police proceedings, PW-2 had entered the room of the appellant twice on 01.10.1999 at the time of raid; first,

when he was told by the appellant that she was to receive the entire money for and on behalf of herself and her superiors (PW-8 and PW-9) whereafter he came out to telephonically inform the TLO and then returned, as instructed, to the room of the appellant again for the second time when the money was statedly handed over. In the witness box, however, PW-2 would only state that when he had met the appellant in her office after 3 p.m., informing her that he had brought the money and enquiring about PW-8 and PW-9, she told him that they had just left after waiting for him as he was expected to come by 1.00 p.m. and then he handed over the entire money to her as asked for. There is no reference to the previous sequence or conversation. PW-3, the shadow witness, in contrast, stuck to the police version about two visits to the room even going to the extent of stating that PW-2 had informed the team in-charge by his cell phone that the officer in-charge of CAW Cell was not available and that, upon return, while he sat near the door he was a witness to the handing over the money by PW-2 by it being put on the table of the appellant. Pertinent to add here that PW-3 is on record to further state that he could not hear the conversation between the appellant and PW-2 at such stages, possibly on account of the distance involved.

20. The omission on the part of PW-2 to narrate the first visit and exchange with the appellant is not without significance. It has a bearing on the role of PW-8 & PW-9 who have been presented as prosecution witnesses. PW-3, the shadow witness, does speak about such visit but then would not say anything beyond the fact that the officer in-charge CAW Cell was not available. This is neither here

nor there. One cannot read into this evidence the fact that PW-2 had had a conversation with the appellant wherein she had repeated the demand of illegal gratification on her own behalf and on behalf of PW-8 and PW-9, explaining their absence and conveying the desire that the money meant for them be also passed on to her since PW-3 could not hear the exchange without PW-2 so deposing.

21. What stands out as a contradiction of significance is the conflicting version of PW-2 and PW-3 about the handing over of the illegal gratification. If the version of PW-2 is to be believed, the money had been accepted by the appellant by her left hand and thereafter kept by her under the file cover. In contrast, PW-3, who was at a vantage position outside the door in the corridor claims to have seen PW-2 taking out the money from his pocket and putting it on the table immediately whereupon PW-2 had given the signal by calling from his telephone. While the last part is also contradictory to the sequence of events narrated in the case and in the testimony of PW-2, what is crucial is the fact that PW-3 does not claim to have seen the appellant receiving the bribe money in her hand. He was, in fact, declared hostile and cross examined by the public prosecutor but he would stick to his version that the appellant never received the money by extending her hand.

22. Despite the above crucial contradiction introduced through the testimony of PW-3, the evidence of PW-2 could still have been accepted if PW-5, the other police official present in the room, it being her work station, had corroborated the prosecution case in material particulars. She was examined by the prosecution. But all that she was

asked to depose was that in her presence the CBI officials and the complainant had come, the latter accusing the appellant of having received the money. She stated that she was made to sit in her chair while personal search of the appellant was carried out which had resulted in the recovery of the bribe money. This obviously was never the prosecution case. The money was never found on the person of the appellant. It had been recovered from beneath the file on her office desk. PW-5 was not called upon to explain the sequence of events prior to the entry of the CBI officials. If she had been present throughout, she would be privy to the previous conversation as well. While it is true that she being a colleague of the appellant, there was a possibility of her not confirming the prosecution story. But then, her evidence could not be wished away. She had been present and whatever had been seen by her, had to be brought out. If she was withholding information, she could have been questioned in that light. Instead of such efforts, the prosecution agreed to go by her account wherein the recovery was effected after personal search which seriously contradicts the prosecution charge.

23. The prosecution evidence reveals that after the entry of the TLO and other team members, once the money had been recovered, the wash of the left hand of the appellant was taken and this was followed by wash of the table and also of the file cover under which the money was found lying, each confirming the presence of the phenolphthalein powder with which the currency notes used in trap had been treated. The recovery memo indicates two bottles of pink coloured solution having been seized. If there were three washes taken, there should

have been three separate bottles of pink solutions. It has come out in the evidence that the washes of the table and of the file cover had been mixed up. This was not a correct method to conduct the proceedings.

24. What raises further doubts as to the extent of trustworthiness of the prosecution story is the non-production of the audio recording of the conversation through receiver-cum-recorder. As noted earlier, the recovery memo confirmed that exchange had been properly recorded and it corroborated the version of the complainant as to the demand and acceptance of the bribe. The fact that recording was correct and audible was also stated by Inspector Mirdula Shukla (PW-10), who was part of the trap party. But, Inspector SQ Ali (PW-7) who had filed the charge-sheet took the position that the recording could not be relied upon since it was poor and there was lot of background noise interference. This version cannot be accepted on its face value. The recording, howsoever poor, should have been placed as evidence before the court leaving the conclusions to be drawn therefrom to the court. Since the trap officers are on record to state that conversation recorded in the cassette was audible, its non production is legitimately referred to by the defence to demand adverse inference to be drawn. The possibility cannot be ruled out that if the recording had been presented, it would have contradicted the version of PW-2.

25. Last but not the least, reference needs to be made to the order of sanction (Ex. PW6/A), granted under Section 19(1)(c) of Prevention of Corruption Act, 1988 by Mr. P. Kamraj, Deputy Commissioner of Police of South District, New Delhi for prosecution of the appellant. As pointed out by the learned senior counsel, this sanction order refers

to involvement of one Daulat Singh as a shadow witness in the trap that was laid leading to the arrest of the appellant. The entire evidence does not reveal involvement of any person named Daulat Singh. Apparently, the sanctioning authority did not peruse the evidence collected or brought before it properly or did not apply its mind and issued the sanction mechanically on the basis of draft that may have been prepared at some other end. Such error in the sanction order cannot be countenanced. It vitiates the proceedings taken out in its wake.

26. For the foregoing reasons, the appellant deserves benefit of doubts. She is consequently acquitted. The impugned judgment and order on sentence are set aside. The bail bonds are discharged. The fine amount, if deposited, shall be refunded to the appellant.

R.K.GAUBA, J.

MAY 18, 2017

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